

201107032



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV 22 2010

Uniform Issue List 408.03-00

XXXXX
XXXXX
XXXXX

SE: T:EP: RA: TY

Legend:

Taxpayer A = xxxxx

Individual B = xxxxx

IRA X = xxxxx

Account Z = xxxxx

Amount N = xxxxx

Amount O = xxxxx

Year 1 = xxxxx

Date 1 = xxxxx

Date 2 = xxxxx

Date 3 = xxxxx

Dear xxxxx:

This is in response to a letter dated June 11, 2010, as supplemented by correspondence dated July 9 and 16, 2010, requesting a letter ruling waiving the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations in support of the above request are submitted under penalties of perjury:

Taxpayer A, age represents that she received a distribution of Amount N from IRA X, which she intended to roll over into an IRA to be established at Financial Institution E. Taxpayer A asserts that, due to error by Financial Advisor C of Financial Institution E, Amount N was not rolled over timely into another IRA. Taxpayer A further asserts that Amount N has not been used for any purpose and remains deposited with Financial Institution E.

Taxpayer A represents that Taxpayer A and Individual B were married, that Individual B maintained IRA X at Financial Institution D, and that Individual B died in Year 1. Documentation submitted indicates that Taxpayer A was the sole designated beneficiary of IRA X.

It is represented that, after the death of Individual B, Taxpayer A relied upon the expertise of professionals, including Financial Advisor C, a financial advisor employed by Institution E, to consolidate and otherwise simplify numerous investment accounts which had been held by Individual B. Specifically, it is represented that Financial Advisor C was responsible for overseeing the completion of paperwork for the rollover of IRA X from Financial Institution D to an IRA to be established at Financial Institution E in Taxpayer A's name.

On Date 1, Taxpayer A requested the distribution of IRA X. On Date 2, Financial Institution D issued to Taxpayer A a check for Amount N. On Date 3, Taxpayer A went to Financial Institution E and presented Financial Advisor C with a personal check for Amount O, an amount greater than Amount N, which represented, in addition to the distribution of IRA X, the liquidation of several of Individual B's other investments. The following day, Financial Advisor C deposited the check for Amount O into a non-IRA account (Account Z) at Financial Institution E.

Taxpayer A represents that Financial Advisor C was aware on Date 3 when she received the check for Amount O that it contained IRA proceeds for rollover, that Date 3 was within the applicable 60-day rollover period and that Taxpayer A reasonably relied on Financial Advisor C to complete the paperwork to establish an IRA in Taxpayer A's name at Financial Institution E and to deposit Amount N into such IRA.

It is represented that Financial Advisor C failed to establish an IRA for the benefit of Taxpayer A. Amount N remained in Account Z until Taxpayer A's accountant discovered the discrepancy while preparing her return for the tax year in which IRA X was distributed.

Financial Advisor C assisted Taxpayer A with the filing of this ruling request and Financial Institution E paid the applicable user fee. In a letter addressed to the Service, Financial Institution E has confirmed that Financial Advisor C made an error which caused Amount N of IRA X to remain in a non-IRA account at Financial Institution E instead of being rolled over timely into an IRA.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount N from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if, at any time during the 1-year period ending on the day of such receipt, such individual received any other amount described in section

408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a rollover of Amount N of IRA X was due to error by Financial Advisor C, an employee of Financial Institution E.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount N from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount N into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount N will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling assumes that IRA X satisfied the qualification requirements of section 408 of the Code at all times relevant to this transaction.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact xxxxx, I.D. xxxxx, by telephone at xxxxx. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Laura B. Warshawsky", with a long, sweeping horizontal line extending to the right.

Laura B. Warshawsky, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose